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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,744	09/05/2003	James A. Donovan	130130	9076

7590 08/23/2004

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EXAMINER

DUONG, THO V

ART UNIT PAPER NUMBER

3743

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/656,744	Applicant(s) DONOVAN, JAMES A.	
	Examiner Tho v Duong	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: on page 4, line 13, in the specification, “ if to hot can affect the skin ” appears to be a typographical error since this phrase does not make sense. Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: the reference numbers “37a” and “37b” are described on page 12, line 12, in the specification but not in the drawing. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 7, the phrase "or the like" renders the claim(s) indefinite because the phrase "and the like" renders the scope of the claims unascertainable since the examiner is not sure what element is "the like" of towels.

Claims 6,10,12 recite the limitation "said towels" and "the towels" in lines 1,2 and 1 respectively. There is insufficient antecedent basis for this limitation in the claim.

Claims 3,9 and 15 recite the limitation "said cause " in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 1-12 are further rejected as best can be understood by the examiner in which "the like" is interpreted to be any product to be heated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5,7-11 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al. (US 6,289,889) in view of Cheney III (US 5,143,048). Bell discloses (figures 1B,1K, 1L and column 8, lines 30-36) a device for providing warm a plurality of towels or wipes

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comprising an outer package contains plurality of towels; a heat source (7) comprising a frangible container containing a quantity of heat-producing composition in a compartment (9) and a quantity of activating solid in a separated compartment (11) so that upon flexing the frangible container, heat is generated by contact of the heat-producing composition and the activating solid; and the heat source (7) is surrounded in the middle of the towels. Bell further discloses (column 13, line 24-34) a temperature indicator is on the package to indicate the temperature of the towels or product to be heated. Bell does not disclose that the heat-producing composition and the activating solid are of the same material and heat is generated by crystallization. Cheney discloses (figure 1 and column 1, lines 40-62) a disposable heat pack that has heat generated by crystallization of a super cooled liquid of sodium acetate and sodium acetate in crystal form (5) upon mixing the two together. Cheney further discloses that sodium acetate in super cooled liquid and crystal form are used so that the amount of heat and duration is easily controlled and any chemical reaction is avoided. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Cheney's teaching in Bell's device for the purpose of controlling amount of heat and duration easily and avoiding any chemical reaction. Cheney further discloses (column 2, lines 35-38) that hydroxyethyl cellulose is a thicken agent and is not the super cooled liquid. As regarding claims 3, since the prior art discloses the same material "sodium acetate" as claimed, it is inherently that the temperature of the heat pack can be up to 135 degrees F.

Claims 6,12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell and Cheney as applied to claims 1,7 and 113 above, and further in view of Kaiser et al. (US 4,296,161). Bell and Cheney substantially disclose all of applicant's invention except for the

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material of the towels. Kaiser discloses (column 1, lines 16-24) household towels and baby wipes have been known to made of fibers for the purpose of reinforcing the structure of the towels. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Kaiser's teaching in the combination device of Bell and Cheney for the purpose of reinforcing the structure of the towels.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kohout (US 6,103,139) discloses a single encapsulated hot pack activator.

Tanhehco (US 5,915,461) discloses a heat pack and trigger apparatus.

Angelillo et al. (US 5,736,110) discloses activator for initiating crystallization of supersaturated solution.

Williams (US 3,804,077) discloses a hot or cold pack.

McConnel et al. (US 6,639,185) discloses baby wipes warmer.

Page et al. (US 5,738,082) discloses a portable baby wipes warmer and carrier.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Tho Duong whose telephone number is (703) 305-0768. The examiner can normally be reached on from 9:30-6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennet, can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.



TD

August 11, 2004



Tho Duong

Patent Examiner. .